

1 RONALD J. TENPAS
Assistant Attorney General
2 Environment and Natural Resources Division
United States Department of Justice

3 ELIZABETH F. KROOP
4 D.C. Bar No: 943795
E-Mail: Elizabeth.Kroop@usdoj.gov
5 United States Department of Justice
Environment and Natural Resources Division
6 Environmental Enforcement Section
PO Box 7611
7 Washington, DC 20044
Telephone: (202) 514-5244
8 Facsimile: (202) 514-5283

9 THOMAS P. O'BRIEN
United States Attorney
10 Central District of California

11 LEON W. WEIDMAN
Chief, Civil Division
12 United States Attorney
Central District of California

13 Attorneys for the United States of America
14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 BIOFRIENDLY CORPORATION,
21 Defendant.
22

CV08-07124 SJO (CTX)
Case No. _____
COMPLAINT

23
24 Plaintiff United States of America, by it undersigned attorneys, by authority
25 of the Attorney General of the United States, and at the request of the
26 Administrator of the United States Environmental Protection Agency ("EPA"),
27 alleges as follows:
28

2008 OCT 29 AM 10:12
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

1 NATURE OF THE ACTION

2 1. This is a civil action pursuant to the Clean Air Act ("CAA" or "Act"),
3 Title II, Section 211(d), 42 U.S.C. § 7545(d), against Defendant Biofriendly
4 Corporation ("Biofriendly"), for violations of Sections 211(a) and (b) of the Act,
5 42 U.S.C. § 7545 (a) and (b), and the regulations promulgated thereunder at 40
6 C.F.R. Part 79, concerning fuel additives and fuels containing additives, which are
7 manufactured, processed, sold, offered for sale, and introduced into commerce in
8 the United States.

9 JURISDICTION AND VENUE

10 2. This Court has jurisdiction over the subject matter of this action and
11 the parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Sections 205 and
12 211 of the Act, 42 U.S.C. §§ 7524 and 7545.

13 3. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b)
14 and (c) and 1395(a), and Sections 205 and 211 of the Clean Air Act, 42 U.S.C.
15 §§ 7524 and 7545, because the violations set forth in the Complaint are alleged to
16 have occurred within this judicial district and Biofriendly's principal place of
17 business is located within this judicial district.

18 THE DEFENDANT

19 4. Defendant Biofriendly is a corporation established under the laws of
20 Nevada, whose principal place of business is Covina, California.

21 5. Defendant Biofriendly is a manufacturer and processor of fuel
22 additives and/or fuels containing additives, and in the business of selling, offering
23 for sale, and introducing into commerce such fuels and/or fuel additives for
24 distribution within the United States and internationally.

25 GENERAL ALLEGATIONS

26 6. At all times relevant to this action, Biofriendly manufactured,
27
28

1 processed, introduced into commerce, sold, offered for sale, and distributed fuels
2 and fuel additives in the United States, including the fuel additive, Green Plus.

3 7. Biofriendly is a "person" within the meaning of Section 302(e) of the
4 CAA, 42 U.S.C. § 7602(e).

5 THE CLEAN AIR ACT AND APPLICABLE REGULATIONS

6 8. Section 211(a)-(d), 42 U.S.C. §§ 7545(a)-(d) of the Act, and the
7 regulations promulgated thereunder at 40 C.F.R. Part 79, establish a system for the
8 registration, manufacture, processing, introduction into commerce, sale, and
9 distribution of fuel and fuel additives.

10 9. Pursuant to Section 211(a), 42 U.S.C. § 7545(a), and 40
11 C.F.R. § 79.4(b), no manufacturer or processor of a designated fuel or fuel additive,
12 may sell, offer for sale, or introduce into commerce such fuel or fuel additive,
13 unless it has been registered in accordance with Section 211(b) of the Act, 42
14 U.S.C. § 7545(b).

15 10. Certain fuels and fuel additives produced or sold for use in motor
16 vehicle diesel fuel have been designated for registration by the EPA. Section
17 211(b), 42 U.S.C. § 7545(b); 40 C.F.R. §§ 79.31, 79.33.

18 11. Under the Act, the manufacturer of a designated fuel additive must
19 notify the EPA of the chemical composition of that additive and provide other
20 information and assurances. Section 211(b)(1)(B), 42 U.S.C. § 7545(b)(1)(B); 40
21 C.F.R. §§ 79.20 - 79.21.

22 12. Under the Act, the manufacturer of a designated fuel must notify the
23 EPA of the commercial identifying name and manufacturer of any additive
24 contained in that fuel, the range of concentration of that additive, the purpose-in-
25 use of that additive, and provide other information and assurances. Section
26 211(b)(1)(A), 42 U.S.C. § 7545(b)(1)(A); 40 C.F.R. §§ 79.10-79.11.

1 13. The manufacturer of a designated fuel or fuel additive also must
2 comply with testing requirements to determine potential public health effects of the
3 fuel additive, emissions resulting from use of that additive, the effect of such
4 additive on emission control performance, and the extent to which such emissions
5 affect public health or welfare. Section 211(b)(2), 42 U.S.C. § 7545(b)(2);
6 40 C.F.R. Part 79, Subpart F.

7 14. Upon EPA's determination that a manufacturer or processor's
8 registration application meets the requirements of 40 C.F.R. §§ 79.11 and/or
9 § 79.21, and that the fuel or fuel additive has been satisfactorily tested in
10 accordance with 40 C.F.R. Part 79, Subpart F, the fuel or fuel additive is
11 registered.

12 15. Section 211(d) of the Act, 42 U.S.C. § 7545(d), provided for base civil
13 penalties including up to \$25,000 per day per violation of the requirements of
14 Section 211, 42 U.S.C. § 7545, plus the value of the economic benefit to the
15 defendant arising out of such violations. The base penalty amount per day per
16 violation was increased to \$27,500 for violations occurring between January 31,
17 1997 and March 15, 2004, and \$32,500 for violations occurring on or after March
18 15, 2004. See 28 U.S.C. § 2461; 31 U.S. § 3701, 40 C.F.R. § 19.4; 69 Fed. Reg.
19 7121 (Feb. 13, 2004).

20 16. United States district courts have jurisdiction to assess civil penalties
21 for violations of Section 211 of the Act, 42 U.S.C. § 7545, and also to restrain
22 violations of this section, including the award of injunctive or other appropriate
23 relief to assure the submission of information and testing required under the law.
24 Sections 205 (b) and 211(d) of the Act, 42 U.S.C. §§ 7524(b) and 7545(d)(2).

25 FIRST CLAIM FOR RELIEF

26 Paragraphs 1 through 16 are realleged and incorporated herein by
27
28

1 reference.

2 17. Pursuant to Section 211 of the Act, 42 U.S.C. § 7545, and the
3 regulations promulgated thereunder, in July 2001, Biofriendly filed a notification
4 with the EPA to obtain registration of its diesel fuel additive, Green Plus.

5 18. Upon review of the information provided in the notification, the EPA
6 registered Biofriendly's additive, Green Plus, on September 28, 2001.

7 19. During the period from September 2002 to in or around May 2006,
8 Biofriendly sold, offered for sale, and introduced into commerce a diesel fuel
9 additive identified as Green Plus and a diesel fuel containing a fuel additive
10 identified as Green Plus.

11 20. During the period from September 2002 to in or around May 2006,
12 Biofriendly manufactured and processed the Green Plus additive and fuel
13 containing the Green Plus additive that it sold, offered for sale, and introduced into
14 commerce.

15 21. In registering Green Plus, Biofriendly failed to disclose certain
16 constituents of the additive's chemical composition, and failed to provide the
17 testing, information, and assurances required pursuant to Section 211 of the CAA,
18 42 U.S.C. § 7425, and the regulations implementing that section at 40 C.F.R. Part
19 79.

20 22. Accordingly, from September 2002 to in or around May 2006,
21 Biofriendly sold, offered for sale, and introduced into commerce a designated fuel
22 additive, Green Plus, and/or diesel fuel containing a designated additive, Green
23 Plus, which had not been properly registered under Section 211 of the Act, 42
24 U.S.C. § 7545, and the regulations implementing that section at 40 C.F.R. Part 79.

25 23. Pursuant to Section 211(d)(1) of the Act, 42 U.S.C. § 7545(d)(1),
26 Biofriendly is therefore liable to the United States for civil penalties of up to
27
28

1 \$27,500 per violation per day for each violation occurring between September
2 2002 and March 15, 2004, and \$32,500 per violation per day for each violation
3 occurring on or after March 15, 2004, plus the value of any economic benefit
4 gained by the company as a result of these violations.

5 SECOND CLAIM FOR RELIEF

6 Paragraphs 1 through 23 are realleged and incorporated herein by
7 reference.

8 24. Section 211 (a)-(c) of the Act, 42 U.S.C. § 7525 (a)-(c), and the
9 regulations promulgated thereunder at 40 C.F.R. Part 79, require the disclosure of
10 information, performance of tests, and provision of other assurances to properly
11 register a designated fuel or fuel additive.

12 25. Pursuant to Section 211(d)(2), 42 U.S.C. § 7545(d)(2),
13 Biofriendly is subject to injunctive or other appropriate relief as necessary to assure
14 its compliance with the CAA registration requirements for the fuel additive, Green
15 Plus, and fuels containing the additive, Green Plus, including the provision of
16 information, tests, and assurances as required by law.

17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff, the United States of America, respectfully requests
19 that this Court:

20 (A) assess civil penalties against Biofriendly for up to the amounts provided
21 under the Act;

22 (B) order Biofriendly to remedy noncompliance and comply prospectively
23 with applicable requirements under the Act, through injunctive and other
24 appropriate relief as necessary;

25 (C) award the United States of America its costs and disbursements in this
26 action; and
27
28

1 (D) grant such other relief as this Court deems just and proper.

2
3 Respectfully submitted,

4
5 Date: 10/23/08

6 RONALD J. TENPAS
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 United States Department of Justice

10 Date: 10/27/08

11 ELIZABETH F. KROOP
12 Trial Attorney
13 United States Department of Justice
14 Environment & Natural Resources Division
15 Environmental Enforcement Section
16 P.O. Box 7611
17 Ben Franklin Station
18 Washington, DC 20044-7611
19 Telephone: (202)-514-5244
20 Facsimile: (202)-514-2583

21
22
23
24
25
26
27
28 Of Counsel:

Marcia S. Ginley
US Environmental Protection Agency
OECA; Air Enforcement Division
Denver, Colorado 80202